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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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18 ORACLE USA, INC. a Colorado
    corporation; ORACLE AMERICA,
    INC., a Delaware corporation; and
19 ORACLE INTERNATIONAL
    CORPORATRION, a California
20 corporation,

21   Plaintiffs,

22   v.

23 RIMINI STREET, INC., a Nevada
    corporation; SETH RAVIN, an
24 individual

25

26   Defendants.

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Case No. 2: 10-cv-0106-LRH-PAL

[PROPOSED] ORDER GRANTING ORACLE'S MOTION TO MODIFY PROTECTIVE ORDER

1   Pending before this Court is Plaintiffs Oracle America, Oracle USA and Oracle

2   International Incorporation's (collectively, "Oracle") Motion to Modify Protective Order

3   ("Motion").

4   Having considered (1) Oracle's Motion and supporting papers; (2) third-party

5   CedarCrestone's Opposition and supporting papers, and having heard and considered the

6   arguments of counsel at the regularly scheduled hearing of this matter:

7   IT IS HEREBY ORDERED THAT Oracle's Motion is GRANTED as follows.

8   1. On May 21, 2010, the Court entered a stipulated Protective Order in this action (the

9   "Protective Order"). Dkt. 55. The Protective Order allows non-parties, like CedarCrestone, to

10 designate produced information as "Confidential Information" or "Highly Confidential

11 Information – Attorneys' Eyes Only" without seeking the Court's prior permission. *Id.* ¶ 2. The

12 Protective Order restricts the use of these designated materials to the "preparation for trial, trial

13 of and/or appeal from this Action and no other." *Id.* ¶ 8. The Protective Order is a blanket

14 Protective Order in that the parties make their own designations of confidentiality without Court

15 involvement. The receiving party (here, Oracle) may only share materials designated as

16 "Confidential Information" or "Highly Confidential Information – Attorneys' Eyes Only" with

17 individuals in connection with this action. *Id.* ¶¶ 9, 10, 12. The Protective Order provides that

18 its terms are subject to modification. *Id.* ¶ 19.

19   2. On February 14, 2011, Oracle subpoenaed CedarCrestone for foundational documents

20 concerning CedarCrestone's business model. On July 19, 2011, Oracle, Rimini and

21 CedarCrestone entered into a stipulation (the "CedarCrestone Stipulation") whereby

22 CedarCrestone agreed to the terms of the Protective Order. Pursuant to the CedarCrestone

23 Stipulation, the parties agreed that the Protective Order would govern materials produced by

24 CedarCrestone in response to discovery requests in this action. The CedarCrestone Stipulation

25 did not modify paragraph 19 of the Protective Order, which provides that the Protective Order

26 may be modified.

27   3. On December 1, 2011, Oracle deposed CedarCrestone's 30(b)(6) representative, Paul

28 Simmons. Dkt. 273 ¶ 7. CedarCrestone has designated all of this deposition, including exhibits

1   used at the deposition which it had previously produced without any confidentiality designation,

2   as "Highly Confidential Information – Attorneys' Eyes Only." *Id*. The DVD and Simmons

3   deposition transcript and exhibits are referred to below as "the Discovery Materials."

4   4.   On May 14, 2012, Oracle filed a motion seeking to modify the Protective Order. Dkt.

5   272. Through its motion, Oracle sought a limited modification of the Protective Order to allow

6   Oracle to use the Discovery Materials obtained from CedarCrestone to prepare and file a

7   complaint against CedarCrestone. *Id*. Oracle did not seek to otherwise modify the restrictions

8   contained in the Protective Order, including the restrictions on public disclosure. *Id.* The motion

9   came for hearing before this Court on July 3, 2012. Dkt. 364. The Court denied Oracle's motion

10   at the hearing and as reflected in the Court's minute order dated July 5, 2012. *Id.* In the course

11   of denying Oracle's motion, the Court ruled that the materials produced by CedarCrestone that

12   Oracle sought to use were relevant to the claims Oracle said it wished to bring against

13   CedarCrestone. On July 23, 2012, Oracle filed an objection to the Court's ruling with Judge

14   Hicks. Dkt. 369. As of the filing of this Motion, Judge Hicks has not yet ruled on Oracle's

15   objection.

16   5.   On September 5, 2012, Oracle filed a complaint against CedarCrestone in the Northern

17   District of California, thereby initiating the *CedarCrestone* Action. Papay Declaration In

18   Support Of Plaintiffs' Motion To Modify Protective Order., Ex. B. In the *CedarCrestone*

19   Action, Oracle asserts claims for copyright infringement, breach of contract, and unfair

20   competition in connection with CedarCrestone's conduct in providing tax and regulatory updates

21   for PeopleSoft software to its customers. *Id*.

22   6.   Courts in the Ninth Circuit "strongly favor[] access to discovery materials to meet the

23   needs of parties engaged in collateral litigation." *Foltz*, 331 F.3d at 1131. This preference is

24   supported by the well-founded policy rationale that "[a]llowing the fruits of one litigation to

25   facilitate preparation in other cases advances the interest of judicial economy by avoiding the

26   wasteful duplication of discovery." *Id.* (citing *Bechman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d

27   470, 475 (9th Cir. 1992)). Therefore, requests to modify a protective order to allow the use of

28   discovery in collateral litigation "should generally be granted." *Id.*

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1   7. *Foltz* sets out a two-step test. First, the party seeking the modification "must demonstrate

2   the relevance of the protected discovery to the collateral proceedings and its general

3   discoverability therein." *Id.* at 1132. Second, the district court weighs "the countervailing

4   reliance interest of the party opposing modification against the policy of avoiding duplicative

5   discovery." *Id.* Both steps are satisfied here.

6   8. After reviewing Oracle's complaint, the Court reaffirms its prior finding that the

7   materials produced by CedarCrestone in this action are relevant to the claims Oracle has brought

8   in the *CedarCrestone* Action. In addition, the Court finds that CedarCrestone does not have a

9   sufficient reliance interest in the blanket Protective Order in place in this action to warrant

10   blocking Oracle's access to this relevant material.

11   Accordingly, IT IS HEREBY ORDERED that paragraph 8 of the Protective Order in this

12   action is modified to include the following sentence at the end of the paragraph:

13   "Notwithstanding the above, Oracle may use certain materials produced by CedarCrestone in this

14   action in connection with the collateral litigation, captioned *Oracle, et al. v. CedarCrestone, Inc.*,

15   Case No. CV-12-4626, pending in the Northern District of California (the "*CedarCrestone*

16   Action"). Those materials, which shall be referred to as the "Discovery Materials," shall consist

17   of the entire deposition of CedarCrestone witness Mr. Paul Simmons (including all exhibits to

18   that deposition), and the DVD of computer files produced by third party CedarCrestone in this

19   Action." The existing confidentiality designations for the Discovery Materials shall remain in

20   place, and the Discovery Materials shall otherwise be governed by the restrictions and

21   procedures in the Protective Order that apply to discovery produced in this action designated as

22   "Confidential Information" or "Highly Confidential Information – Attorneys' Eyes Only," as

23   applicable, until such time as the parties agree or a Court orders otherwise.

24   For purposes of paragraphs 8, 9, 10, 11, 12, and 14 of the May 21, 2010 Stipulated

25   Protective Order the terms 'this Action" and "this litigation" shall include the *CedarCrestone*

26   Action with respect to the Discovery Materials.

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[PROPOSED] ORDER GRANTING ORACLE'S MOTION TO MODIFY PROTECTIVE ORDER

1   **IT IS SO ORDERED.**

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3   Dated: _____, 2012   _____

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